Supreme Court, U.S.
FILED
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No. 96-350

In The

Supreme Court of the United States

October Term, 1996

SOPHIE STARZENSKI, KAZMER STARZENSKI, and GENNIE STARZENSKI,

Petitioners,

vs.

CITY OF ELKHART, RICHARD L. MOORE, STREET COMMISSIONER, RAYMOND H. MINEGAR, CODE ENFORCEMENT OFFICER AND PRESIDENT, LEROY BERRY, JR., CITY OF ELKHART HEARING OFFICER and HEALTH AND SANITATION COMMISSION,

Respondents.

On Petition For Writ Of Certiorari To The Indiana Court Of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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29 pp

RESPONDENTS' COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether the Petitioners' claims are barred because the Petitioners did not timely appeal the decision which they challenge in this Court.

2. Whether the Indiana Court of Appeals correctly upheld the trial court's determination that the Respondents lawfully entered the premises of the Petitioners.

3. Whether the Indiana Court of Appeals correctly upheld the trial court's determination that Respondents did not engage in an unconstitutional taking of Petitioners' property.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents, City of Elkhart, Richard L. Moore, Street Commissioner, Raymond H. Minegar, Code Enforcement Officer and President, Lee Roy Berry, Jr., City of Elkhart Hearing Officer, and Health and Sanitation Commission (collectively referred to as the "City"), by counsel, respectfully ask the Court to deny the Petition for Writ of *Certiorari* of the Petitioners, Sophie Starzenski, Kazmer Starzenski, and Gennie Starzenski (collectively referred to as the "Starzenskis").

COUNTERSTATEMENT OF THE CASE

A. Procedural History.

The Starzenskis appealed the trial court's order denying Starzenskis' request for a preliminary injunction against the City to the Court of Appeals of Indiana. On November 27, 1995, the Indiana Court of Appeals heard oral argument in this matter. On January 10, 1996, the Indiana Court of Appeals issued its decision affirming the trial court's denial of the preliminary injunction. The decision of the Indiana Court of Appeals is reported as *Starzenski v. City of Elkhart, et al.*, 659 N.E.2d 1132 (Ind. App. 1996). On February 7, 1996, Starzenski filed a Petition to Transfer to the Indiana Supreme Court. On May 31, 1996, the Indiana Supreme Court denied that Petition. On August 29, 1996, the Starzenskis filed their Petition for Writ of *Certiorari* to this Court.

B. Statement of the Facts.

The Starzenskis' Statement of the Case curiously omits the vast majority of facts relied upon by the Indiana Court of Appeals in reaching its decision. The complete set of facts relied upon by that Court are as follows. *See Starzenski v. City of Elkhart, et al.*, 659 N.E.2d 1132, 1134-36 (Ind. App. 1996).

Sophie, Kazmer, and Gennie Starzenski own real estate located at 1015 West Garfield in Elkhart, Indiana. Sophie described herself in her brief to the Court of Appeals as a "bag lady" who resides in Elkhart.[1] Kazmer and Gennie do not live in Elkhart.[2]

In 1991, the Building Commissioner and Enforcement Authority (hereinafter, "Enforcement Authority")[3] of the

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[1] There is a house on the property at 1015 West Garfield, although the City and the Starzenskis dispute how the property is used. At the oral arguments before the trial and appellate courts, Sophie claimed that she lived in the house at that location as her primary residence. The City, however, disputed this contention and pointed to the fact that there has been no water or gas service to the house for many years. For the purposes of its decision, the Indiana Court of Appeals presumed that this house was Sophie's home.

[2] Throughout the proceedings before the Building Commissioner and Enforcement Authority of the City of Elkhart, Sophie and the City could only identify the last known address of Kazmer as being in Antarctica, and the address of Gennie as being in New York. It was not until this matter was brought before the Elkhart Superior Court that Kazmer and Gennie informed the City that their current address is in Sequim, Washington.

[3] Indiana Code 36-7-9-2 defines "enforcement authority" as the chief administrative officer of the department authorized by

City of Elkhart determined that the Starzenskis' property was in violation of I.C. 36-7-9-1, *et seq.*, and City of Elkhart Ordinance No. 3897, due to a large accumulation of trash and debris on the premises. The Enforcement Authority ordered that the property be cleaned,[4] and a hearing on the matter was set for July 24, 1991.[5] In accordance with I.C. 36-7-9-25, notice of the hearing was sent to, and received by, Sophie at the 1015 West Garfield address. Notices also were sent to Kazmer and Gennie at their Antarctica and New York addresses, but the notices were returned undelivered. Notice was also published in the local newspaper, *The Elkhart Truth*. Sophie appeared at the hearing.

At the July 24, 1991 hearing, the City offered photographs and testimony concerning the condition of the property. At the conclusion of the hearing, the Hearing Authority[6] determined that the property was in substantial violation of the building code, was unsafe, unclean and constituted a nuisance. The Hearing Authority affirmed the Enforcement Authority's order, and sent a written "order" to Sophie instructing the Starzenskis to

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ordinance to administer I.C. 36-7-9, *et seq.*, which governs the enforcement of building standards.

[4] Indiana Code 36-7-9-5(a)(4) authorizes the Enforcement Authority to issue an order requiring "removal of trash, debris, or fire hazardous material in and about the unsafe premises."

[5] Indiana Code 36-7-9-7, with unrelated exceptions, requires a hearing be held relative to each order of the Enforcement Authority.

[6] Indiana Code 36-7-9-2 defines "hearing authority" as a person or persons designated as such by the executive of a city or county, or by the legislative body of a town.

remove "junk and debris" from the property within 30 days, after which time the City was authorized to enter the property and take the required action. A copy of this Findings of Fact and Action Taken is attached as Appendix A.

The 30-day time period came and went without the Starzenskis taking any substantial action to ameliorate the problem. By September, 1992, the Starzenskis had not complied with the order, and in fact additional debris had collected on the property. At that time, the exterior of the property was filled with trash, debris, and flammable materials. As visible through windows and doors, the house was "jam packed" with debris and garbage.

The Enforcement Authority again determined that the house and premises were unsafe, and on September 23, 1992 executed a "Notice – Order to Take Action." A copy of this Order to Take Action is attached as Appendix B. The Order to Take Action was sent to Sophie, who signed a return receipt upon receiving it. Notices of the Order to Take Action were also sent to Kazmer and Gennie, but were returned undelivered. The City also published the Order to Take Action in the local newspaper. The Order to Take Action required the removal of trash from the entire premises within 10 days, and stated:

> If you do not comply with this order, the City of Elkhart, through its Building Department, may enter the premises and carry out the action required by the order and charge you for the costs of said clean up.

Notice of a hearing was sent to, and received by, Sophie. Again, notices were sent to Kazmer and Gennie but were

returned undelivered. The second hearing was held October 29, 1992.

Sophie appeared at the second hearing, offered evidence, cross-examined witnesses, and presented argument. Inspectors testified and offered photographs of the property, describing the premises, inside and out, as containing a large amount of debris and trash.[7] Also offered into evidence was a September 24, 1992, police report, completed when Sophie reported that the house had been burglarized, in which the investigating officer stated that there was no way to enter the house due to piles of materials stacked to the ceiling. The police officer reported that "[t]he residence was jammed full, [including] the basement of everything imaginable. . . . "[8]

The Hearing Authority again found that the residence was a nuisance, and again affirmed the order of the Enforcement Authority that "substantial stuff and things"[9] be removed from the premises. The Hearing Authority specifically instructed Sophie to bring the property into compliance within 15 days, after which the

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[7] There is no evidence that inspectors actually entered the residence on the property. The Record shows that the inspectors determined that the house on the property was packed with debris from seeing trash piled up in the windows.

[8] The police officer did not enter the residence, as the door was blocked by debris. The police report reflected that Sophie had to enter the house by crawling through a window to see if anything had been stolen.

[9] Evidently, the Hearing Authority chose to refer to the debris within and about the house as "substantial stuff and things" because Sophie objected to the characterization of the material in her house as being trash.

City was authorized to enter the property, inside and out, and take the necessary action. The Hearing Authority also expressly notified Sophie of her right to appeal to the Circuit or Superior Court, and told her that she must appeal his decision within 10 days. *The Starzenskis did not appeal.*

Again, the Starzenskis did not comply with the Order within the time allotted. The City sent notice of its intent to enter and clean the property to Sophie at the 1015 Garfield address on February 4, 1993. Sophie received this notice on February 5. The City entered the property on February 8, 1993, to remove debris and clean. The City found the yard, house, shed and garage packed with trash. The house was filled with debris, in some places five feet deep, which completely covered the floor. The basement also was packed with trash, at some points as high as the ceiling.

The City's workers separated and removed the trash, while items that appeared to be of value were retained in areas of the house that the workers had cleared away. These items remained in Sophie's possession. The debris removed from the residence filled eight dump trucks and was taken to a landfill.

While the City's workers cleared the debris, the Starzenskis' attorney petitioned for, and was awarded, a temporary restraining order that stopped the trash removal. The temporary restraining order was presented to the City's workers and prevented the workers from clearing the refuse from the Starzenskis' basement. In later seeking a preliminary injunction, the Starzenskis argued that the City violated their Due Process rights by entering

their property without a warrant, and that the City had taken their possessions without just compensation. After a hearing, the trial court denied their request for a preliminary injunction, finding that the City's actions did not violate the Constitution.

REASONS FOR DENYING PETITION

In their Petition for Writ of *Certiorari* (the "Petition"), the Starzenskis assert that the City (a) violated the Fourth Amendment to the U.S. Constitution by unreasonably seizing the Starzenskis' property and (b) violated the Fifth and Fourteenth Amendment by disregarding the Due Process requirements of notice and a predeprivation hearing. Additionally, though they present no substantive "takings" argument in their Petition, the Starzenskis also apparently argue that the City engaged in an unconstitutional taking of the Starzenskis' property. *See* "Questions Presented" section of the Petition. In fact, the Indiana Court of Appeals correctly determined that the City's actions were constitutional in all respects. Furthermore, the Starzenskis are barred from pursuing this claim for a non-constitutional reason, *i.e.* they failed to comply with the applicable limitations periods for appeal of the City's actions.

I. NON-CONSTITUTIONAL GROUNDS TO DENY PETITION FOR WRIT OF *CERTIORARI*.

The Indiana Court of Appeals held that, because the Starzenskis failed to appeal the administrative hearing officer's decision within the statutory time limits, the

Starzenskis waived their challenge to the Hearing Authority's decision and Enforcement Authority's order, and the opportunity to have the court conduct a *de novo* review of the evidence under I.C. § 36-7-9-8. *Starzenski v. City of Elkhart, et al.*, 659 N.E.2d 1132, 1137 (Ind. App. 1996). The Starzenskis have not challenged this holding on appeal. Therefore, even assuming that the Starzenskis were correct in their assertion that the City acted unconstitutionally (an assertion that the City heartily denies), they still would be barred from pursuing this appeal because they failed to appeal the decision of the Hearing Authority in a timely manner.

II. ALLEGATIONS OF FOURTH AMENDMENT/DUE PROCESS VIOLATIONS.

The Starzenskis present their Fourth Amendment concerns as follows:

> "Whether the minimum constitutional requirements for a search and seizure of personal property in a private home were met when the Respondent, City of Elkhart, entered the Petitioner's home to abate a nuisance without a judicial warrant but pursuant to an administrative order."

Though it is not entirely clear from the Petition, the Starzenskis apparently contend that the City's search and seizure of their property was unreasonable under the Fourth Amendment because the City did not give the Starzenskis adequate due process under the Fifth and Fourteenth Amendments. *See* Petition, page 7. The Starzenskis cite two occurrences of inadequate due process. First, they argue that the City's entry onto their premises

was unreasonable because the due process was inadequate. Second, they argue that they were entitled to a predeprivation hearing prior to the disposal of some of the junk and trash in the premises. Finally, the Starzenskis argue that there is a "conflict among the states" in this area of due process jurisprudence. The City will address each allegation in turn.

(a) Entry Onto Premises.

Since the City could clearly have entered Starzenskis' property if it had a judicial warrant (*see, e.g., Michigan v. Tyler*, 436 U.S. 499 (1978)), the question becomes whether there is a constitutional distinction between the administrative order authorizing entry onto Starzenskis' private property vis-a-vis a judicial order authorizing that same entry. In the circumstances present here, Supreme Court case law and lower court decisions clearly indicate that no such distinction exists.

An illegal search within the meaning of the Fourth Amendment occurs whenever one's reasonable expectation of privacy is violated by unreasonable governmental intrusion. *Katz v. United States*, 389 U.S. 347, 353 (1967). The "basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against *arbitrary* invasions by governmental officials." *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967) (emphasis added).

The City's entry onto the Starzenskis' property was neither unreasonable nor arbitrary. The Starzenskis, or any other reasonable person, had to have seen it coming.

The City had consistently notified the Starzenskis of the problem from 1985 until the date of entry, conducted two hearings on the matter, and provided the Starzenskis with formal notice on two separate occasions prior to taking any action. Regardless of what the Starzenskis' subjective expectations may have been at that point, no reasonable privacy interests can be said to have remained. *See Michigan v. Clifford*, 464 U.S. 287, 292 (1984) ("The test essentially is an objective one"). To retain privacy interests, the Starzenskis were required to take nominal precautions to preserve their privacy. *See, Rawlings v. Kentucky*, 448 U.S. 98 (1980). Here, the Starzenskis chose not to take these normal precautions.

The Starzenskis' Petition seems to imply that a judicial warrant is required whenever an entry is made to abate an established nuisance irrespective of the underlying circumstances. For at least three reasons, this position is invalid.

First, under the exercise of its police power, the City had the power to establish reasonable regulations for the protection of the lives, health, and property of their citizens and to enforce compliance with such regulations by fixing penalties to be imposed upon violations. *Spitler v. Town of Munster*, 214 Ind. 75, 14 N.E.2d 579 (Ind. 1938).

Second, requiring judicial authorization of an abatement determination "would impose untoward burdens upon local governments as well as the courts." *See Shadwick v. City of Tampa*, 407 U.S. 345, 353 (1972) ("Communities may have sound reasons for delegating the responsibility of issuing warrants to competent personnel other than judges or lawyers").

Third, in the Fourth Amendment context, the purpose of review by a "judicial officer" prior to issuance of a warrant is to "insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause." *Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963). There is nothing in the record or in the Court of Appeals' decision to suggest that the hearing authority was anything but competent, impartial, neutral, and detached.

The hearings before the hearing authority most assuredly constituted an adequate buffer between the municipal employees and the Starzenskis. Clearly, due process does not require a judicial tribunal; all that is required is notice and an opportunity to be heard. *Schweiker v. McClure*, 456 U.S. 188 (1982); *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). For all practical purposes, the conclusion that a nuisance existed in violation of municipal law, and was therefore subject to abatement pursuant to the governmental power of the municipality, was "judicially" determined by the hearing officer. Moreover, an application for a search warrant is *ex parte*. The subject is never asked for his side of the story. In this sense, the Starzenskis enjoyed an opportunity not available to the usual "suspect." *See Conner v. City of Santa Ana*, 897 F.2d 1487, 1497 (9th Cir. 1990) (Trott, C.J. dissenting), *cert. denied*, 498 U.S. 816 (1990).

(b) Removal of Junk and Trash.

The Starzenskis' due process argument relating to the alleged seizure of their property is very limited. On this point, the Starzenskis do not assert that the City violated their due process rights by ordering the property cleaned up. Instead, the Starzenskis assert that they were "entitled to a predeprivation hearing concerning what items should be seized." Petition, pages 14-15.

In fact, the Starzenskis were given more than six years of Due Process and notice. The City's position is well-stated by the Indiana Court of Appeals:

> The Record does not support [the Starzenskis' assertion that their due process rights were violated]. The City of Elkhart dealt with the unsanitary and hazardous condition of the Starzenskis' property since 1985. The City repeatedly asked that the Starzenskis clean the property, and in prior years had entered the property under its police power and removed debris from Sophie's yard. There is no evidence in the Record that the Starzenskis ever acted to substantially remedy the situation themselves.
>
> Further, Sophie was told numerous times by the City to remove the trash and debris from her property, inside and out, or the City would enter and do it for her. The first of these specific notices was given to her in 1991. Nearly two years later and faced with no other recourse, the City finally made good on its threats to enter the Starzenskis' property and remove the hazard. Even then, however, the City provided Sophie with three-days notice before it entered her property. Now, after ignoring all of the City's

notices and warnings and neglecting to act for the benefit of themselves and their community, the Starzenskis complain that the City acted unreasonably by taking items that the Starzenskis wished to keep. However, we must balance the Starzenskis' interest in retaining these certain items against the City's interest in abating the nuisance the Starzenskis created.

> As is true in other circumstances, the reasonableness determination will reflect a "careful balancing of governmental and private interests. . . . " Assuming for example that the officers were *acting pursuant to a court order, and as often would be the case, a showing of unreasonableness on these facts would be a laborious task indeed.*

Soldol [*v. Cook County, Illinois,* 506 U.S. 56, 71 (1992)] (citations omitted) (emphasis added).

The Starzenskis could have prevented the City from removing the selected items that they wished to retain by not allowing the property to decay into such a hazardous condition, cleaning up the property themselves, or at a minimum sorting through the debris themselves and separating the items they wanted to retain. The Starzenskis left the City with no option but to abate the nuisance through the exercise of its constitutional police power. The City acted completely within the confines of an order of which the Starzenskis had notice and an adequate opportunity to comply. In the light of these circumstances, we cannot say that the trial court

> erroneously determined that the City did not act unreasonably.[10]
>
> Without citing to the Record, the Starzenskis claim that there is testimony and evidence that the City's workers threw valuables and money out with the rubbish, and may have kept some of Sophie's property themselves. Also without citing the Record or authority, they claim that the City failed to properly train the workers who conducted the clean up. Under our standard of review, we cannot reconsider or reweigh evidence and substitute our judgment for that of the trial court. City workers testified that they sorted through the debris in the house and separated out money and items that appeared to be of value. An inventory reflects the property the City did not discard. . . . The trial court did not abuse its discretion in denying the Starzenskis' petition for a preliminary injunction.

Starzenski v. City of Elkhart, et al., 659 N.E.2d at 1140-41.

(c) Alleged "Conflict Among the States".

To shore up their Fourth Amendment argument, the Starzenskis assert that there is a conflict among the states as to how government authorities may proceed to abate public nuisances under the Fourth Amendment. Petition, pages 10-11. To bolster this position, the Starzenskis cite

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[10] We [i.e. the Indiana Court of Appeals] note, however, that in its denial of the Starzenskis' request for a preliminary injunction, the trial court provided the Starzenskis with a measure of relief by granting them an additional 60 days to remove items they wish to retain from the property before the City could complete the clean up of the property.

five cases. Out of these five cases, three have nothing whatsoever to do with the Starzenskis' Fourth Amendment question.[11]

The remaining two cases, *Conner v. City of Santa Ana*, 897 F.2d 1487 (9th Cir. 1990), *cert. denied*, 498 U.S. 816 (1990), and *Hroch v. Omaha*, 4 F.3d 693 (8th Cir. 1993), reveal no conflict among the states. Instead, these two decisions hinge on the presence or absence of judicial oversight. In both *Hroch* and the present case (but not in *Conner*), the complainant petitioned for state court review of the order to enter the premises and sought a temporary restraining order to prevent such action. *Hroch*, 4 F.3d at 696-97. In both *Hroch* and the present case, the state court denied the requested injunction. *Id.* In *Hroch*, as here, the complainant's argument that there was a Fourth Amendment violation simply ignored the question of whether this judicial oversight of the actions which are alleged to violate the Fourth Amendment provide a "constitutionally adequate substitute for a warrant." *Id. Conner*, the primary case relied upon by the Starzenskis, simply does not deal with this issue of "judicial oversight".

The City is unaware of any case that has invalidated any administrative decision where there was judicial oversight such as that present here. Furthermore, the City is unaware of any case, state or federal, that invalidated an administrative officer's decision on due process

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[11] In *City of Cedar Falls v. Flett*, 330 N.W.2d 251 (Iowa 1983) and *Carson v. State*, 144 S.E.2d 384 (Ga. 1965), the police officer who entered the premises obtained a judicial warrant. *State Ex Rel. Miller v. Anthony*, 647 N.E.2d 1368 (Ohio 1995) did not even address the Fourth Amendment.

grounds where, as here, the Petitioner's had the right to appeal the administrative officer's decision to a judge and chose not to do so.

III. THE "TAKINGS" ARGUMENT.

Though the Starzenskis allege that the City engaged in an unconstitutional taking when it disposed of the junk, trash, and debris on the Starzenskis' property (*See* Question 2 of Petition's Questions Presented section), they provide no argument or citation to support this position. For its part, the City agrees with the Indiana Court of Appeals' reasoning that the government's exercise of its police power to abate a public nuisance hazardous to the public health, safety, or welfare does not entitle the property owner to compensation, and, in any case, that the Starzenskis were given ample opportunity to avoid any loss whatsoever. *Starzenski v. City of Elkhart, et al.*, 659 N.E.2d 1132 (Ind. App. 1996).

CONCLUSION

The Starzenskis failed to timely appeal the Administrative Hearing Officer's decision. Therefore, for completely non-constitutional reasons, the Starzenskis are barred from pursuing this claim. Even if they had timely filed their constitutional objections, however, those claims would still have no force. The City granted the Starzenskis much more due process than is constitutionally required. Far from engaging in unreasonable search and seizure, the City acted very reasonably when

it cleaned up the Starzenskis' premises. For the foregoing reasons, the Court should deny the Petition for Writ of *Certiorari*.

Respectfully submitted,

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APPENDIX A – FINDINGS OF FACT DATED JULY 24, 1991

STATE OF INDIANA)
) SS:
ELKHART COUNTY)

DIVISION OF CODE ENFORCEMENT

CITY OF ELKHART, INDIANA

CASE NO. 2-11-07-91

CITY OF ELKHART,
Petitioner.

vs.

FRANK STARZENSKI,
PAULINE STARZENSKI,
SOPHIE STARZENSKI,
GENNIE STARZENSKI,
KAZMER STARZENSKI,
Respondents.

FINDINGS OF FACT AND ACTION TAKEN

Hearing on the 11th day of July, 1991.

This matter having been set for hearing on this date, the Petitioner, City of Elkhart, now appears by the Director of the Building Department, Leroy Robinson, and the following respondents [sic] appear: Sophie Starzenski.

Service of Notice of a June 26, 1991, Hearing on the Enforcement Authority's original Order of Condemnation, dated April 25, 1991, on all the Respondents named above by certified mail was attempted by the Petitioner on May 6, 1991, but records indicate that only one of the Respondents, Sophie Starzenski, actually received notice. The Petitioner did, however, give notice by publication to

all Respondents on May 10, 1991 of the June 26, 1991 hearing. That hearing was apparently continued until today's date, but there is no evidence of any notice of that continuance. Respondent Sophie Starzenski was apparently given notice because she appeared at the hearing. Thus the required notice to all Respondent parties was not given.

Hearing on said Order to Comply is now held and the Hearing Officer being duly advised, NOW FINDS as follows:

1. The legal description of the premises herein is as follows: 44 feet W side Lot 93 Woif's Addition to the City of Elkhart, Indiana, in the City of Elkhart, Elkhart County, Indiana, and commonly known as: 1015 West Garfield.

2. The above described premises is owned by: Sophie Starzenski, Frank Starzenski, Pauline Starzenski, Gennie Starzenski and Kazmer Starzenski and no other persons or entities have an interest therein.

3. Evidence was given by both Petitioner and Sophie Starzenski, the sole respondent to appear. On the basis of that evidence the Hearing Officer makes the following findings:

a) The subject property suffers from substantial physical damage on the roof, and the porch. A part of the over hang [sic] of the front portion of the roof is missing.

b) The outside of the premises is unkempt and cluttered with items which appear from the evidence to be junk as of May 28, 1991 and still exist as of the time of this hearing.

c) It is unclear whether the inside of the premises is in basically the same condition as the outside, but there is a likelihood that it is in a similar state.

d) The present state of the premises presents an appearance which is offensive to the eye and presents an attraction to others, especially the young and inquisitive. There is a possibility that such persons could be injured after going onto the premises.

e) There is no fence or other obstruction surrounding the property which prevents passersby from going onto the premises.

4. The Hearing Officer therefore concludes that the subject premises is in substantial violation of the building code of the City of Elkhart in that it is unsafe and unclean and constitutes a nuisance; it is also in violation of the Code by virtue of the physical damage to the roof and porch. To the extent that the original notice of April 25, 1991 alleged such violations, those allegations are found to be true. It is not clear, however, that the entire house on the premises is as unsound as the original notice alleges.

5. Since the inside of the premises may be in a like condition as the outside, the City by virtue of its police power, has the right to inspect the inside of the house on the property pursuant to law (I.C. 36-7-9-16) and after such inspection present such additional evidence as it thinks proper in further hearings in this cause.

6. For now, it is the decision of the Hearing Officer that the Respondent, Sophie Starzenski, is given thirty (30) days beginning July 25, 1991, at 8:00 o'clock a.m. in

which to repair the damage to the porch and roof and remove the junk and things from the premises which currently constitutes a nuisance. If she has not done so by that time, the Petitioner may enter the premises and take the required action and tax the owners for costs.

7. This cause is subject to further hearing pending further inspection of the premises by Petitioner after having secured an inspection warrant pursuant to I.C. 36-7-9-16. Notice to *all* parties must be made upon them or their agents by certified mail, return receipt requested, or by any other statutorily acceptable means before such hearing can go forward, however.

DATED: 7-24-91 /s/ Lee Roy Berry, Jr.
Lee Roy Berry, Jr.
Hearing Officer
Division of Code Enforcement
City of Elkhart, Indiana

APPENDIX B – ORDER TO TAKE ACTION DATED SEPTEMBER 23, 1992

CITY OF ELKHART (SEAL)

ELKHART, INDIANA 46516 • MUNICIPAL BUILDING, 229 SO. SECOND STREET • (219) 294-5471

FAX (219) 293-7964 **JAMES P. PERRON, Mayor**
CITY ACCESS 522-2377

NOTICE

ORDER TO TAKE ACTION

TO: Each and all of the persons, firms, or corporations hereinafter listed, together with any and all unknown owners, land contract holders, lien holders or mortgagees of the following described real estate located in Elkhart County, Indiana, their unknown heirs, executors, administrators, agents or assigns, and any and all persons, firms or corporations having or claiming any titles, rights or interests therein.

TO: SOPHIE STARZENSKI, FRANK STARZENSKI, PAULINE STARZENSKI, GENNIE STARZENSKI AND KAZMER STARZENSKI

RE: 1015 West Garfield Avenue, Elkhart, Indiana 46516
Also known as 44' West Side of Lot 93
WOLFS Addition to the City of Elkhart, Indiana
AND
1905 Fieldhouse, Elkhart, Indiana 46517
Also known as West Side of Lot 101 Fieldhouse Addition to the City of Elkhart, Indiana.

You and each of you are hereby notified that, effective this date, the posted building or buildings located on

the above real estate are declared unfit and unsafe for any use whatsoever in its or their current condition and constitute a nuisance and danger to the health, safety, and general welfare of the community, pursuant to Indiana Code, sections 36-7-9-4 and 36-7-9-5(4) and are in violation of Elkhart City Ordinance No. 3446 and Amendment 3787 which reads in part: that it shall be unlawful to allow the accumulation of, on any premises not approved for dumping of refuse, nuisances, including, but not limited to, garbage, ashes, refuse, rubbish, manure, offal, carcasses, junk, automobile parts and bodies, tires, junked appliances, bedding, junked furniture, clippings from growth, old newspaper, and all other kinds and types of organic or inorganic material gernally [sic] classified as junk or refuse.

IT IS HEREBY ORDERED that:

THE TRASH, DEBRIS, REFUSE, JUNK AND FIRE HAZARDOUS MATERIAL IN AND ABOUT THE UNSAFE PREMISES BE REMOVED. The exact terms and conditions of this Order may be obtained from the Building Commissioner.

You are hereby given *TEN (10) days* in which to take the required action beginning with the date of receipt of this Order.

This Order shall become final within ten (10) days after you receive notice of this Order unless you or someone holding a fee interest, life estate interest or equitable interest or their legal representative *request a hearing in writing* and that request is delivered to the Elkhart City Building Department before the end of the ten day period.

If you do not comply with this Order, the City of Elkhart, through its Building Department, may enter the premises and carry out the action required by the Order and charge you for the costs of said clean-up.

If you plan to transfer a substantial interest in the above-named property, Indiana Law requires that you tell the person or persons to whom you plan to transfer that substantial property interest about the existence and contents of this order before transferring or agreeing to transfer a substantial interest in the above-named property. You must also supply the Building Commissioner with written copies of that person or those person's full name(s), address(es) and telephone number(s) and copies of the legal instrument(s) under which you transferred or agreed to transfer that substantial property interest.

Dated at Elkhart, Indiana this 23rd day of SEPTEMBER 1992.

By /s/ Leroy Robinson
LEROY ROBINSON, Building Commissioner, City of Elkhart,
229 S. Second Street
Elkhart, Indiana 46516
(219) 294-5471